

DE 03-025 through DE 03-029

DE 03-031 through DE 03-039

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Renegotiated Arrangements with Fourteen Affiliated
Hydro-Electric Producers**

**Order Approving Settlement Agreement Terminating Certain Rate
Orders and Long Term Contracts for the Purchase and Sale of
Electricity**

O R D E R N O . 24,177

May 22, 2003

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Frederick J. Coolbroth, Esq., of Devine, Millimet, Stahl & Branch, for the fourteen affiliated hydro-electric producers; Michael W. Holmes, Esq. for the Office of Consumer Advocate; Anthony F. Simon, Esq. for the Town of Goffstown, in DE 03-034; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 13, 2003, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a series of motions seeking approval of renegotiated power purchase arrangements with fourteen hydro-electric independent power producers (collectively, hydro producers) from which PSNH currently purchases power pursuant to rate orders or long term power purchase contracts. The motions concern HDI Associates III-Ashuelot Hydro (Docket No. DE 03-025), Avery Hydroelectric Associates-Avery Dam (Docket No. DE 03-026), Hadley Falls Associates-Hadley Falls (Docket No. DE 03-

027), Lakeport Hydroelectric Corporation-Lakeport Dam (Docket No. DE 03-028), HDI Associates III-Lower Robertson Dam (Docket No. DE 03-029), Franklin Power LLC-River Bend Hydro (Docket No. DE 03-031), Franklin Power LLC-Stevens Mill (Docket No. DE 03-032), Clement Dam Hydroelectric LLC-Clement Dam (Docket No. DE 03-033), Greggs Falls Hydroelectric Associates-Greggs Falls (Docket No. DE 03-034), HDI Associates I-Hopkinton Hydro (Docket No. DE 03-035), HDI Associates I-Lochmere Dam (Docket No. DE 03-036), SFR Hydro Corporation-Milton Mills Hydro (Docket No. DE 03-037), Mine Falls Limited Partnership-Mine Falls (Docket No. DE 03-038) and Pembroke Hydro Associates-Pembroke Hydro (Docket No. DE 03-039). All of the hydro producers are affiliates of Algonquin Power Systems, Inc. and Algonquin Power Income Fund (Algonquin).

Under each proposed renegotiated arrangement, PSNH would make a lump sum payment to the hydro producer in exchange for a buyout of the specific long term power contract or rate order. PSNH would then no longer be required to purchase the generation output from the hydro producers at the rate order/contract prices and the hydro producers would no longer be obligated to sell all of their generation to PSNH. PSNH would, however, continue to be obligated to purchase the generation output of the facilities at the short term rates established from time to time by the Commission. In addition, neither PSNH

nor Algonquin would be obligated to close on any of the transactions unless all fourteen buyout agreements are approved by the Commission without material conditions.

Pursuant to the Order of Notice issued on February 27, 2003, the Commission held a Prehearing Conference on March 25, 2003. Subsequently, the Commission issued a Prehearing Conference Order, *see Public Service Company of New Hampshire*, Order No. 24,152 (April 4, 2003). The details of the procedural history of these dockets through April 4, 2003 which are set forth in that Order will not be repeated here.

On April 25, 2003, PSNH filed a Stipulation and Settlement (Settlement) executed on behalf of PSNH, the Office of Consumer Advocate (OCA), and the hydro producers. On April 30, 2003, PSNH filed additional execution pages signed on behalf of the Staff of the Commission and the Board of Selectmen of the Town of Goffstown. The Commission held a hearing on the Settlement on May 1, 2003.

II. POSITIONS OF THE PARTIES

A. PSNH

PSNH's filing in each docket consists of a motion to terminate rate order or long term power contract and the supporting testimony of Stephen R. Hall, Rate and Regulatory Services Manager for PSNH. The attachments to his testimony include a copy of his earlier testimony in Docket No. DE 02-073 or DE 02-072,¹ savings calculation summary for all fourteen dockets, detailed lump sum payment and savings calculation worksheets related to each docket, the agreement between PSNH and the hydro producer to terminate rate order or contract for the purchase and sale of electric energy, as applicable, containing, *inter alia*, revised interconnection terms, and certain information regarding PSNH's stipulated rate of return, local tax revenues and State of New Hampshire Department of Environmental Services payments made by several of the projects.

¹ DE 02-073 involved renegotiated rate order buyout arrangements with Thomas Hodgson and Sons, Inc., the operator of the China Mills Dam; DE 02-072 involved renegotiated power contract buyout arrangements with Woodsville/Rochester Hydro Associates, the operator of Wyandotte Hydro. The dockets were two of a series opened in 2002 to consider PSNH'S proposed buyout or buydown of twelve different rate orders or long term power purchase contracts. See *Public Service Company of New Hampshire*, Order No.s 24,022-24,031 (August 9, 2002 and Order No. 24,098 (December 20, 2003) (collectively, the 2002 hydro dockets). According to PSNH, Mr. Hall's testimony in the prior dockets was offered to provide certain background information regarding the negotiation process resulting in agreements between PSNH and the hydro producers, the proposed methodology PSNH used to calculate the savings from the buyout, and PSNH's proposal for retention of its share of the savings. In many respects, the proposed buyouts are similar to those proposed by PSNH and approved by the Commission in 2002.

Since the calculations included in the filings assumed a closing of all the renegotiated arrangements on March 31, 2003, PSNH has presented updated calculations assuming a closing on May 31, 2003.

Like the 2002 hydro dockets, the proposed lump sum payment to each hydro producer was calculated as 80 percent of the present value of the difference between what would have been paid under the rate order or power purchase contract and anticipated ISO short term market clearing prices. These were assumed to be \$0.04 per kilowatt hour (kWh) through 2006 and then escalated annually at 4 percent through the remaining term of the rate order or power purchase contract.

PSNH still considers the \$0.04 per kWh amount as escalated in future years to be "conservative" in favor of ratepayers and appropriate even after the price spikes occurring in the winter of 2003. PSNH reached that conclusion after obtaining NatSource brokerage sheets and NYMEX gas contract data in late March 2003, which allowed PSNH to develop a projection of around the clock energy prices through 2008; for years after 2008, PSNH escalated the prices 4 percent annually. That projection indicated that market prices are expected to exceed \$0.04 per kWh for the next eighteen months and then to drop under \$0.04 per kWh. For this year, the projection is \$47.91 per megawatt hour (MWh) with significantly lower prices expected

after that, based on the forward pricing curve used. By comparison, PSNH calculates that ratepayers would be neutral about whether the buyouts are in their interest if market prices escalated to \$50.46 per MWh this year, remained there for 4 years and then increased 4 percent per year after that during the period the rate orders or power purchase contracts are in effect.

PSNH testified that all the hydro facilities are run of the river operations with little or no ponding capabilities. Because the generation output provided to PSNH from the facilities is greater in the spring and fall and much less in the summer when the need for power, and the cost of power, is greatest, PSNH believes its price projections are appropriate and expects them to be somewhat more stable than if it had to project peak period prices.

Two of the hydro facilities, Franklin Power LLC-River Bend Hydro (Docket No. DE 03-031) and Franklin Power LLC-Stevens Mill (Docket No. DE 03-032), are the subject of a dispute pending before the Superior Court, see *Franklin Power LLC v. Public Service Company of New Hampshire*, Northern District of Hillsborough County, 02-E-0258, and the Commission, see Docket No. DE 02-169. Franklin Power LLC had acquired its interest in these facilities through a foreclosure auction held on February 12, 2002. PSNH thereupon stopped paying the rate order prices

and began paying applicable short term rates, claiming that Franklin Power LLC was not entitled to rate order prices on grounds, inter alia, that (i) a rate order cannot be validly transferred without the prior approval of the Commission and (ii) independent power producers are "public utilities" under New Hampshire law and as such may not transfer their franchise, works or system without the prior approval of the Commission. In order to settle these disputes, the proposed lump sum payments to Franklin Power LLC also include an amount equal to what PSNH refused to pay during the period February 12, 2002 through May 31, 2003. This amount is approximately \$300,000.

PSNH compares this extra amount to the overall savings to be achieved by the renegotiated arrangements. PSNH anticipates that the lump sum payments totaling approximately \$20 million will generate approximately \$5 million in total savings. According to PSNH, the payment of the \$300,000 in dispute is in exchange for renegotiated arrangements which bring about the estimated \$5 million in total savings.

PSNH does not expect any other hydro arrangements to be renegotiated and said that one possible renegotiation of an arrangement with a non-hydro independent power producer is being considered. PSNH testified that to the best of its knowledge, Commission approval of the Settlement should have no effect on the continued operation of the hydro facilities involved in the

present dockets and therefore no significant changes in employment or environmental impacts.

According to PSNH, average annual production from the hydro facilities totals approximately 70,600 mWh. Excluding the proposed buyout arrangements and the 2002 hydro docket buyouts, PSNH will continue to purchase power from forty-two projects under long term arrangements, including thirty-five hydro projects with a total rated capacity of 32 megawatts, a PUC Audit Value of 12 megawatts, and approximately 130,000 mWh in annual generation; five wood-to-energy projects with a total rated capacity of 66 megawatts, a PUC Audit Value of 65 megawatts, and approximately 554,000 mWh in annual generation; and two trash to energy projects with a total rated capacity of 14 megawatts, a PUC Audit Value of 13 megawatts, and approximately 108,000 mWh in annual generation. The capacity represented by the facilities operated by the hydro producers is approximately .5 percent of the total New Hampshire-based capacity, and 1.7 percent of the PSNH's New Hampshire-based capacity. In terms of energy output, these facilities represent approximately .7 percent of total New Hampshire-based generation and approximately one percent of PSNH's New Hampshire-based generation.

PSNH provided information regarding the operational status of the facilities involved in the 2002 hydro dockets.

This information indicates that of the nine facilities for which buyout arrangements were approved, five are not now generating power,² three continue to generate on a regular basis in the same way as before the renegotiated arrangements, and one continues to generate under revised arrangements. All three of the facilities for which buy down arrangements were approved continue to generate.

B. Hydro Producers-Algonquin

As a signatory to the Settlement, the hydro producers support the Settlement. According to information provided by Algonquin, its plans are to continue the operation of the plants safely and efficiently with no anticipated change in methods of operation or output other than that resulting from changes in water flow. Algonquin states that it has not entered into any agreement or definitive negotiations for any sale of the hydro facilities but may consider such proposals when and if they arise.

C. Other Parties

As signatories to the Settlement, OCA, the Town of Goffstown and Staff support the Settlement.

² However, two of the five facilities are eligible to continue operating and PSNH has no knowledge of any change in status or plans. Another of the five facilities is currently evaluating its options.

III. SUMMARY OF THE TERMS OF THE SETTLEMENT

With several exceptions, the Settlement is nearly identical to the stipulation and settlement agreements filed in the 2002 hydro dockets. It is also consistent with the specific offer made to and accepted by the hydro producers.

The Settlement provides that if it is approved by the Commission, PSNH will make lump sum payments to the hydro producers in exchange for the termination of the rate orders and long term power purchase contracts. The hydro producers will nevertheless be free to sell power to PSNH under the short-term energy and capacity rates set from time to time by the Commission. PSNH will agree, for a fee based on PSNH's associated costs, to act as a sponsor at ISO New England for the hydro producers for the purposes of sales to other entities. The lump sum payments have been calculated based upon 80% of the net present value of the difference between the expected payments under the specific rate orders and power purchase contracts for the remainder of their terms and the value of the replacement power cost based upon a projection of future market rates.

The actual amount of savings will be calculated on an on-going basis as provided in paragraph 5 of the Settlement. However, PSNH will create a regulatory asset for each lump sum payment which will be amortized over the remaining term of the

corresponding rate order or long term power purchase contract and will be recovered as a Part 2 stranded cost. Carrying charges will accrue on the unamortized balance of the regulatory asset at the Stipulated Rate of Return, as described in the Agreement to Settle PSNH Restructuring in Docket No. DE 99-099.

If the closing of the renegotiated arrangements is completed after May 31, 2003 the amounts of the lump sum payment, savings and regulatory assets will be adjusted to reflect the actual payment date and PSNH shall also file a statement with the Commission reporting the actual amounts of the lump sum payments, total estimated savings and regulatory assets and the date of payment.

Paragraph 7 of the Settlement provides:

"Consistent with the Stipulation and Settlement agreements filed in DE 02-064 through DE 02-074 and the concern over legislative efforts to provide financial incentives to small power producers to continue operations beyond the early termination of their rate orders or long term power purchase contracts, the Hydro Owners, including their successors or assigns, agree that should they receive any additional payments either directly from PSNH or its customers, excluding direct retail sales to PSNH customers, over the remaining life of the Rate Order or Long-Term Power Contract to continue or restart generating at the facility which is the subject of the current buyout, then the lesser amount of the original or additional payment (plus interest calculated in accordance with Puc § 1203.03(i)(3)) shall be refunded through a payment to PSNH on behalf of its customers. Revenues received by the Hydro Owners on the wholesale market, including any premiums for being a renewable resource and sales to PSNH at short-term avoided cost rates, are separate from the above-noted payments and thus exempted."

As explained at the hearing, there are three types of sales that are not subject to these refunding provisions: direct retail sales to PSNH customers, sales to the wholesale market other than directly to PSNH,³ and sales to PSNH at short term avoided cost rates.

Finally, paragraph 10 of the Settlement contains certain information provided by PSNH regarding the factors the Commission must consider pursuant to RSA 362-A:8, as follows:

"Because the hydropower industry is not labor intensive, there will be minimal loss of jobs if the Hydro Owners terminate operations before the end of the current term of the Rate Orders or Long-Term Power Contracts. The impact on local property taxes will be minimal. The renegotiated arrangements should not have any environmental or health impacts if the respective facilities continue to operate. Even if any of the facilities discontinues hydropower production following renegotiation, no environmental or health impacts are expected unless possibly the dams are operated in a different manner than before. If that were to happen, PSNH is not aware of any significant adverse environmental or health related impacts which are likely to result from the renegotiated arrangements if applicable environmental and health protection laws, regulations and licensing requirements (including FERC licensing and exemption requirements) are complied with. Furthermore, any power generation lost by discontinuance of hydropower production is small, and there is adequate capacity coming on line in New Hampshire and New England from gas-fired generators to replace any lost generation without significant added environmental or health related impacts."

There are several differences between the 2002 dockets and the present dockets worth noting. First, the closing of a proposed buyout is not required unless all fourteen buyouts are

³Expressly included in the wholesale market exemption is any premium for being a renewable resource.

approved. Second, as described above, a payment of approximately \$300,000 is required in connection with DE 03-031 and DE 03-032, in addition to the lump sum buyout payments.

Third, the Settlement calls for one of the hydro producers, Greggs Falls Hydroelectric Associates (GFHA), see DE 03-034, to make payments to the Town of Goffstown in 2003 and 2004 as follows: payments by GFHA as calculated under its Agreement for Payment in Lieu of Taxes (PILOT) dated May 6, 1985, based on actual revenue from electricity sales, plus payment of \$15,000 each year by both GFHA and PSNH. PSNH will not, however, seek to recover its payments to the Town of Goffstown from customers.

Fourth, there is a different methodology for calculating the savings used to determine PSNH's 20 percent share. Instead of recovering a stipulated amount equal to 20 percent of the net present value of the total estimated savings from the buyouts, as provided in the 2002 hydro buyouts, the

formula set forth in paragraph 5 of the Settlement⁴ provides for the calculation on a going forward basis of the savings each month during the time the rate orders or power purchase contracts would have been in effect based on monthly historical annual production figures and actual future market prices. This formula addresses the concern about whether ratepayer savings will in fact materialize, by providing for PSNH to assume the same risk that customers face regarding future changes in market prices for power.⁵

⁴ Paragraph 5 provides in part:

"The Historical Average Production ("HAP") for each facility will be used for the calculations of the savings herein. The HAP shall be equal to the assumed output in kilowatt-hours for each facility which was used in calculating the lump sum payment made to each of the Hydro Owners based upon historical average production for each facility. The net savings resulting from the restructured arrangement for each facility will be calculated each month using the following algorithm:

$$\text{SAVINGS} = [(\text{HAP} \times \text{Energy Rate}) + \text{Capacity Payment}] - [(\text{HAP} \times \text{Short Term Rate}) + \text{Mo. Amrtz}]$$

The net savings for each facility shall be determined by first taking the HAP for each facility for that month and multiplying it by the price that would have been paid under the Rate Order or Long-Term Power Contract ("Energy Rate"), and then adding any capacity payments that would have been made under the Rate Order or Long-Term Power Contract ("Capacity Payment"). Subtracted from this amount will be the HAP for each facility times the ISO-New England's New Hampshire Load Zone Locational Marginal Price (or any successor thereto), and added to that result will be the monthly amortization of the lump sum payment. If the result of this calculation is greater than zero, then twenty percent of this amount will be added to Part 2 Stranded Costs. If the result of this calculation is less than zero, then twenty percent of this amount will be subtracted from Part 2 Stranded Costs."

⁵ Of course, total actual savings for both ratepayers and PSNH depends on whether the lump sum buyout payments turn out to be "just right," i.e., accurately reflect future market conditions, or turn out to be too high or too low, based on future market conditions.

IV. COMMISSION ANALYSIS

These dockets require us to consider whether it is appropriate to terminate the respective rate orders and long term power contracts and replace them with the arrangements provided for in the Settlement. Unlike the 2002 hydro dockets, in which we were asked to judge each docket separately, we are asked here to consider the buyouts as a single package. Accepting this approach in judging the Settlement, we conclude that approval of the Settlement is consistent with the public interest and we will therefore approve it.

As PSNH points out in its pre-filed testimony, the legislature has encouraged the renegotiation of purchased power arrangements with small power producers, including hydro-electric power producers, in order to mitigate stranded costs. See e.g., RSA 374-F:3,XII(c)(2); RSA 362-A:4-c,I. At the same time, in any decision affecting qualifying small power producers and qualifying cogenerators, we must consider certain factors, including the economic impact on the state, community impact, enhanced energy security by utilizing mixed energy sources, potential environmental and health-related impacts, and impact on electric rates. RSA 362-A:8,II(b)(1)-(4).

Based on the projected market rates used to calculate the lump sum payments,⁶ the net present value of the estimated savings from all the renegotiated arrangements is calculated to total \$5,109,365. The methodology for the calculation of the lump sum payments and the savings is the same one we found to be fair, reasonable and consistent with applicable requirements in the 2002 hydro dockets. Based on the record before us, we think the continued use of the same anticipated market prices used in the 2002 hydro dockets is acceptable and appropriate for purposes of calculating the lump sum payments. While it is not possible to determine conclusively that PSNH has negotiated every possible savings that could have been realized from the hydro producers, we observe that Staff and the OCA, among others, support the methodology reflected in the Settlement and no party has come forward to contend that the renegotiated arrangements are not sufficiently favorable to ratepayers.

In agreeing to the Settlement, PSNH is foregoing the pursuit of its claims in DE 02-169 and the related Superior Court action and paying the disputed \$300,000. On the other hand, in order to pursue these claims and avoid paying the \$300,000, PSNH would presumably have to forego the opportunity to reach renegotiated arrangements in the other twelve dockets

⁶ The lump sum payments total \$20,437,461 assuming an effective closing date on May 31, 2003.

since the arrangements are presented as a package transaction. In addition, under the best of circumstances, there is always risk that a favorable litigation result will not be obtained and costs must be incurred in pursuing a resolution. Weighing all these factors, we conclude that the Settlement achieves a reasonable overall result.

We also find that the methodology for calculating and treating the savings to be passed on to both ratepayers and PSNH is fair, reasonable and consistent with applicable requirements. The methodology used in the 2002 hydro dockets made PSNH's share of the savings certain by providing for a regulatory asset to be set up in advance and recovered, while the actual amount of the ratepayer share of the savings would depend on actual future market conditions. If future market prices exceed the anticipated market prices used in the calculations, then the ratepayer share of the savings would be lower than anticipated at the time of the calculations; if future market prices turn out to be less than the anticipated market prices used in the calculations, then the ratepayer share of the savings would be higher than anticipated at the time of the calculations. In the present dockets, the savings formula provides for both PSNH and ratepayers to bear the risk as well as the rewards if actual future market prices vary from those used in the lump sum calculations. RSA 362-A:4-d does not specify how savings are to

be calculated and we cannot say that only one approach to the issue is reasonable. Particularly given the large size of the proposed buyout transaction as compared to the hydro projects bought out in 2002, we are satisfied that the risk-sharing formula set forth in the Settlement is reasonable and fair.

We note that the information in the record regarding the statutory factors that we must consider is general in nature. Nevertheless, we have no reason to doubt its accuracy, and no party is contending otherwise.

The information in the record addresses all the factors we must consider. We have referred to the favorable impact on electric rates above. Since hydro-electric generation facilities are typically not labor intensive operations, the impact of the renegotiated arrangements on state and community job loss and job creation does not appear to be significant.

Although the renegotiated arrangements do not increase energy security by utilizing mixed energy sources, they do not appear to adversely affect energy security either. We are told there are no plans for the hydro facilities to cease or change their operations. Even if the facilities were to cease generating electricity in the future, the capacity and electric generation output is an insubstantial percentage of New Hampshire-based capacity and generation.

It is conceivable that some of the renegotiated arrangements could result in environmental effects if the facilities were operated in a different manner than they are at present. However, based on information provided by PSNH in the Settlement, it does not appear that any such effects are likely if applicable environmental and health protection laws, regulations and licensing requirements are followed.

Finally, the Town of Goffstown's execution of the Settlement evidences its satisfaction with the resolution of the PILOT dispute with the Gregg's Falls Hydroelectric Associates in DE 03-034. Although PSNH is obligated to contribute \$30,000 toward the agreed upon resolution, those funds are not to be recovered by PSNH from ratepayers.

Accordingly, weighing and considering the information in the record before us, we are persuaded to approve the Settlement in these dockets.

Based upon the forgoing, it is hereby

ORDERED, the Settlement is approved and the Motions are granted to the extent they are consistent with the Settlement; and it is

FURTHER ORDERED, that payment of the rate order amounts regarding River Bend Hydro and Stevens Mill under paragraph 9 of the Settlement, as further detailed in the

Motions in DE 03-031 and DE 03-032, is hereby approved; and it is

FURTHER ORDERED, that provided the buyout transactions are closed pursuant to the Settlement, PSNH's petition for adjudication of dispute with Franklin Power LLC, DE 02-169, shall be dismissed with prejudice and DE 02-169 shall be closed without findings or rulings on the merits, following closing of the buyouts and this Order having become final and subject to no motions for rehearing or appeals.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary